

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of STEVENS/BRYERS, Minors.

UNPUBLISHED

August 14, 2014

No. 320610

Mackinac Circuit Court

Family Division

LC No. 2013-006096-NA

Before: M. J. KELLY, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to three minor children under MCL 712A.19b(3)(j). The sole issue on appeal is whether the Department of Human Services established the ground for termination by clear and convincing evidence. Because we conclude the trial court did not clearly err when it found that the Department had established the ground for termination, we affirm.

Respondent is the mother of the three minor children, CS, IB, and EB. The Department petitioned for the removal of respondent's two older children, CS and IB, following a 2011 investigation that resulted in a confirmed case of neglect. The allegations in the petition included physical abuse and extreme disciplinary actions, such as locking CS in his room for long periods of time, and physically abusing then 1-year old IB by grabbing his face in a way that left bruises on his cheeks. Respondent admitted that her mental health issues interfered with her ability to parent her children. Her psychological evaluation revealed a diagnosis of generalized anxiety disorder, depression, and mixed personality disorder with "Dependent, Histrionic, Borderline, and Narcissistic traits." She was required to attend individual and family counseling and to take her medication as prescribed. The Department allowed her to have supervised visitation with her children for two hours twice a week. Approximately one year later, the respective fathers of the children were given full physical custody of their children, and respondent was allocated parenting time.

The incident that gave rise to the current termination proceedings arose in the spring of 2013. According to the Department, respondent picked up IB and EB from their father for an unsupervised weekend visit. When the children were returned to their father, EB's face was bruised along the left side from the hairline to the nose, along the forehead, and she had a small temporal subconjunctival hemorrhage on the left eye. Respondent and her live-in boyfriend explained that the 1-year-old child had fallen several times while trying to walk, but the injuries were thought to be suspicious and consistent with abuse. In addition, the triage team at Devos

Center for Child Protection reviewed EB's case and found that the bruises were likely caused by an impact injury and that they were not well-explained by minor accidents or falls.

The Department petitioned the trial court to take jurisdiction over all three children under MCL 712A.2(b)(1) and (b)(2), to place them in the Department's care for placement, and to terminate respondent's parental rights to all three children. The trial court took jurisdiction after a jury found that one or more of these statutory grounds for removal had been proven with regard to each child. The trial court held a disposition hearing after the trial and the Department sought termination of respondent's parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j). The trial court found grounds for termination under MCL 712A.19b(3)(j), and found that termination was in the best interests of each child, MCL 712A.19b(5).

Respondent argues that the evidence presented at trial and at the dispositional hearing did not constitute clear and convincing evidence of a reasonable likelihood of harm to EB if she is returned to respondent's home. Respondent contends that the evidence was insufficient to prove that respondent injured EB or had an opportunity to prevent the injuries. Specifically, respondent maintains, medical witnesses could not state how EB's injuries occurred. Because of this, respondent insists that the Department failed to establish the statutory ground for termination.

The trial court's findings that a ground for termination has been established and regarding the child's best interests are reviewed for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The essence of respondent's argument is that, because the trial court did not find that MCL 712.19b(3)(b)(i) and (ii) had been proved by clear and convincing evidence, MCL 712.19b(3)(b)(j) cannot be proved by clear and convincing evidence. Under MCL 712A.19b(3)(j), the court may terminate a respondent's parental rights if it finds by clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." For the purpose of terminating parental rights under § 19b(3)(j), the trial court was not limited to considering the potential for physical harm to the children; it could also consider the potential for emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

Although there is some question as to how EB was injured, it is obvious that she was injured while in respondent's home and that the injuries were not consistent with injuries suffered by respondent's other children. It is undeniable that each of respondent's children has suffered neglect or physical abuse while in her care. Although she has made progress while in therapy, the record does not indicate when or whether her therapist thinks she will be able to parent her children safely, and the Department's staff has expressed the belief that there are no other services that could be offered to respondent to help her remedy the situation. In light of the

record evidence, we cannot conclude that the trial court clearly erred when it found that it was reasonably likely that the children will be harmed if again returned to respondent's care. The judge presiding over this case has been intimately involved in domestic relations cases and child protection proceedings involving respondent, her children, and their respective fathers for years. Given this level of familiarity with the parties and the history of their relationships, the trial court was in the best position to judge the credibility of the witnesses and resolve any disputes. *In re Sours Minors*, 459 Mich at 633.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ David H. Sawyer
/s/ Joel P. Hoekstra